vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.480 OF 1997

1. Dockendale Shipping
P.O. Box No.10455, Narsan
Bahamas c/o. Nanti Las Mantime
Ltd., 34, Kartar Bhavan, 121
Shahid Bhagatsingh Road, Colaba
Bombay-5

2. Nauti Las Maritime Ltd.
34, Kartar Bhavan, 121,
S.B. Road, Colaba, Bombay - 5 ... Appellants

V/s.

Shri Jevanbhai Ramji Tandel
Bali Phalia Kolok Pardi
Udwada, Surat, Valsad ... Respondent

Mr.Tariq Baig with N.Sumnani i/b Bhatt & Saldanha for Appellants
Mr.N.M. Ganguli for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 13, 2005**

ORAL JUDGEMENT:

. The First Appeal is directed against the judgment of the Commissioner for Workmen's compensation. The commissioner has granted the application filed by the workman. The appellants were directed to deposit an amount of Rs.15 lacs towards compensation payable to the applicant. The applicant, i.e, the Respondent herein was employed as a seaman with the Appellant No.1 company. The applicant had been in service from 18.5.1990. It appears that on 25.12.1990, he suffered a

cerebral stroke and hemiplegia while at sea. He was, therefore, taken ashore and was treated in a hospital. Thereafter in January 1991, he was repatriated to India and was admitted to hospital for further treatment. It appears that or 11.2.1991, the Respondent's son had him discharged from the hospital, against medical advice and returned with the Respondent to their native place. The Respondent-applicant claimed an amount of Rs.15 lacs as compensation from the appellant contending that he has suffered from an accident arising out of and in the course of employment.

2. The respondent was unable to lead any oral evidence since he had suffered a paralytic stroke which affected his speech. Therefore, on an application made to the Commissioner, the evidence was recorded in Daman. The Commissioner noted that the Respondent was unable to respond to the questions posed to him except by gesticulating. Even these gestures fell short of proving the respondent's case that he had suffered an injury arising out of the during the course of employment. The Master of the ship was examined on behalf of the appellants. The Commissioner after assessing the evidence on record held that the appellants are liable to pay compensation of Rs.15 lacs to the respondent. On the basis of the agreement

entered into between the employer-appellant and the Union. By an order dated 30.3.1997,the Commissioner allowed the claim.

3. Mr.Baig, learned Advocate appearing for the Appellants, submits that no evidence was on record indicating that the cerebral stroke suffered by the respondent is due to the nature of work that he was performing or that it had arisen out of and during the course of employment. The respondent was found lying in his cabin with his right hand partially immobilised. He was given immediate treatment and even after repatriation to India, he was being treated by the Doctors appointed by the appellants. The learned advocate submits that the evidence on record does not indicate in any manner that the nature of work which the respondent performed was such that it would lead to the respondent suffering a stroke. He relied on the judgment of the learned Single Judge of this Court in the case of *Madan Harmat v/s. M/s. Shipping Corporation of India Ltd. & Anr.,* **First Appeal No.1107 of 1999** to submit that cerebral paralysis which the respondent suffered could not be considered to be an employment injury.

4. The learned Advocate also relies on the judgment

in the case of *B.T. Shipping London Ltd. & anr. v/s. Smt.Arati Narayanan & Ors.*, **2000 (2) ALL MR 86** to support his contention that the respondent if at all entitled to any compensation, it would be only the amount payable under the Workmen's Compensation Act and not the amount under the agreement.

5. Mr.Ganguli, on the other hand, submits that the evidence which was on record indicated that the Respondent had suffered hemiplegia on the right side which resulted in a speech defect. He submits that this was an employment injury which was caused due to the exertion while working, the strain and stress which the respondent underwent while on duty. He submits that although the respondent was not able to communicate verbally with the Commissioner when he was examined on commission, the gestures of the respondent were sufficient to prove that the respondent had suffered an employment injury. He further submits that the Master of the ship who was examined on behalf of the appellant has deposed that the workman was required to work for 12 to 13 hours a day which was strenuous work. He was required to work overtime as well by keeping a watch. He submits the nature of work aggravated the condition of the respondent which led to him suffering cerebral stroke/hemiplegia. According to the learned Advocate,

had it not been the nature of work that the respondent was performing, he would not have suffered the injury. He submits that the judgment in *Madan Harmat (supra)*, need not necessarily be followed as that was a judgement delivered in the facts and circumstances of that case. In any event, he submits that assuming the agreement is not applicable to the respondent or he cannot claim under the agreement, the respondent is entitled to compensation payable under the Act for this is an unscheduled injury which has resulted in total permanent disablement. Mr.Ganguli relies on the judgment in he case of *Assistant Engineer, M.P. Electricity Board, Bhind & Anr. v/s. Rajendra Singh Chauhan*, **1988 LAB.I.C. 1114.**

6. The evidence on record led on behalf of the respondent does not inspire any confidence. Apart from the fact that the respondent was unable to verbally communicate his responses to the questions put to him before the Commissioner, the gestures of the respondent which have been recorded as answers to the questions posed do not prove that the accident occurred out of and in the course of employment. In fact, one of the questions posed to him in examination in chief was as to how he suffered a cerebral stroke on the ship. In response to this, the Commissioner has recorded that the

witness i.e., the respondent herein suggested by gestures that he did not know how he suffered it.

7. The Master of the ship was examined on behalf of the appellants. He has stated that the seamen were required to work from Monday to Friday each week from 8 am to 5pm. On Saturdays, the duty was from 8am to Noon and Sunday was a holiday. The duty included a 15 minutes tea break both in the morning and evening and lunch break for one hour. He has further deposed that the normal duties are for maintenance of the ship including painting and cleaning, etc. In 1990, the ship on which the respondent was working was almost new and therefore, the maintainance for it was nil. This witness has also deposed that the seamen were expected to keep a night long vigil with the duty officer. On days of good weather, they are supposed to stand on the bridge and on days of bad weather the seamen are expected to sit inside the wheel house. Every seaman is expected to keep a watch for 3 to 4 hours a day. When the ship is in port, they are expected to keep a gang watch to prevent unauthorised persons from entering the ship to prevent pilferage. The Master has also deposed that there were several other seamen employed on the ship and the applicant’s work was not hard or strenuous. He has further stated that there was a gap of 27 hours

between the last duty performed by the respondent and the stroke suffered by him. He has admitted that the watch duty was expected to be performed by remaining standing throughout. There is no medical evidence on record at all. There is no grievance to indicate that the nature of work which the respondent performed was such as would cause a cerebral stroke or hemiplegia. In my view, unless there is medical evidence on record, it would be difficult to infer that the nature of work performed by the respondent could cause the affliction suffered by him. It is true that the workman was expected to keep a watch which constituted overtime. However, there is no evidence on record at all to indicate that the person who is expected to keep a watch for 3 or 4 hours a day could suffer an employment injury such as the one that the respondent has suffered. The Respondent has been unable to show the nexus between the employment injury and the nature of work that he performed. That being so, it is difficult to accept the findings of the Commissioner. Apart from this, there is evidence on record that the workman had not worked for at least 27 hours prior to the time when he suffered a stroke. All these factors would indicate that there was no nexus between the employment injury and the nature of employment. Therefore, the findings of the Commissioner cannot be accepted.

8. In these circumstances, the impugned judgment and order of the Commissioner is set aside. However, the Respondent has already withdrawn certain amount from the amount deposited by the appellants with the Commissioner. Mr.Baig very fairly states that the amount which has already been paid to the respondent, will not be recovered from him. Appeal is allowed accordingly. The amount deposited with the Commissioner by the appellants shall be paid back to them. No order as to costs.